

JAMES T. COOPER
Claimant

VS.

THE BOEING COMPANY
Respondent

AND

AIG CLAIM SERVICES, INC.
Insurance Carrier

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1. The preliminary hearing Order should be affirmed.
2. The Board affirms the Judge's conclusion that the attack was not related to claimant's employment and, therefore, not compensable under the Workers Compensation

Act. The facts are not disputed. A coworker jumped claimant because of a disagreement over the manner in which claimant drove to work. The coworker believed that claimant had “cut him off.”

3. To receive benefits under the Workers Compensation Act, an injury must arise out of the employment.¹

4. Fights between coworkers usually do not arise out of employment and generally will not be compensable.² But injuries sustained by a worker during a fight arise out of the employment when the fight arises out of the nature, conditions, obligations, and incidents of the employment.³ For an assault stemming from a purely personal matter to be compensable, the injured worker must prove either the injuries sustained were exacerbated by an employment hazard,⁴ or the employer had reason to anticipate that injury would result if the coworkers continued to work together.⁵

5. Claimant argues that the attack was related to his employment as he was required to park in a designated parking lot. Therefore, claimant contends the conflict over his driving techniques was related to a condition of his work. The Board disagrees. The Board concludes that claimant was attacked over events stemming from a purely personal matter. Because claimant’s injuries were neither exacerbated by an employment hazard nor anticipated by respondent, the October 5, 2000 incident is not compensable under the Workers Compensation Act.

6. As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.⁶

WHEREFORE, the Board affirms the April 13, 2001 preliminary hearing Order entered by Judge Barnes.

IT IS SO ORDERED.

¹ See K.S.A. 44-501.

² *Addington v. Hall*, 160 Kan. 268, 160 P.2d 649 (1945).

³ *Springston v. IML Freight, Inc.*, 10 Kan. App. 2d 501, 704 P.2d 394, *rev. denied* 238 Kan. 878 (1985).

⁴ *Baggett v. B & G Construction*, 21 Kan. App. 2d 347, 900 P.2d 857 (1995).

⁵ *Harris v. Bethany Medical Center*, 21 Kan. App. 2d 804, 909 P.2d 657 (1995).

⁶ K.S.A. 44-534a(a)(2).

Dated this ____ day of June 2001.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Kirby A. Vernon, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director